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Attorneys for Plaintiffs SHERI L. KENDALL, dba BALA HAIR SALON,  
 JAMES MASER, MAIZ HOLDING COMPANY, dba PICANTE COCINA  
 RESTAURANT, on Behalf of Themselves and All Others Similarly  
 Situated

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

SHERI L. KENDALL, dba BALA HAIR ) Case No. C 04 4276 JSW  
 SALON, JAMES MASER, MAIZ )  
 HOLDING COMPANY, dba PICANTE ) **FIRST AMENDED**  
 COCINA RESTAURANT, on Behalf of ) **CLASS ACTION ANTITRUST**  
 Themselves and All Others ) **COMPLAINT AND DEMAND**  
 Similarly Situated, ) **FOR JURY TRIAL**

Plaintiffs,

**CLASS ACTION**

vs.

VISA U.S.A. INC., MASTERCARD  
 INTERNATIONAL, INC., BANK OF  
 AMERICA, N.A., a subsidiary of  
 BANK OF AMERICA CORPORATION,  
 WELLS FARGO BANK, N.A., a  
 subsidiary of WELLS FARGO &  
 COMPANY, U.S. BANK, N.A, a  
 subsidiary of U.S. BANCORP,

Defendants.

1 Plaintiffs SHERI L. KENDALL, dba BALA HAIR SALON, and JAMES  
2 MASER, MAIZ HOLDING COMPANY, dba PICANTE COCINA RESTAURANT aver  
3 for their complaint against VISA U.S.A. INC. ("VISA") and  
4 MASTERCARD INTERNATIONAL, INC. ("MASTERCARD"), BANK OF AMERICA,  
5 N.A., a subsidiary of BANK OF AMERICA CORPORATION, WELLS FARGO  
6 BANK, N.A., a subsidiary of WELLS FARGO & COMPANY, U.S. BANK,  
7 N.A, a subsidiary of U.S. BANCORP, upon knowledge with respect  
8 to their own acts and upon information and belief with respect  
9 to all other matters, as follows:  
10  
11

#### 12 JURISDICTION

13 1. Jurisdiction and venue of this action is under 15  
14 U.S.C. §§ 15(a) and 26.

15 2. Defendants or their agents inhabit or are found or  
16 reside in the Northern District of California.

17 3. VISA and MASTERCARD each operate as joint ventures that  
18 are created, owned and governed by their thousands of members  
19 which are primarily banks, including the Defendant banks. VISA  
20 and MASTERCARD are engaged in interstate commerce and are doing  
21 business and are present in the Northern District of California.  
22 Venue of this action against VISA and MASTERCARD, and Defendant  
23 banks and all other bank members of VISA and MASTERCARD, is  
24 proper in this court.  
25

#### 26 INTRADISTRICT ASSIGNMENT

27 4. The basis for assignment to the San Francisco Division  
28 is that a substantial part of the events which give rise to the

1 claims of the named Plaintiff occurred in San Francisco, Sonoma  
2 and Alameda Counties.

3  
4  
5 PARTIES

6 5. Plaintiff SHERI L. KENDALL, dba BALA HAIR SALON  
7 ("BALA") is a resident of Sonoma County and is licensed to do  
8 business and does business as a beauty salon in Sonoma County.  
9 BALA presently has VISA and MASTERCARD contracts with one or  
10 more Defendant banks, or their co-conspirators, and has "sold"  
11 (deposited) VISA and MASTERCARD credit and debit receipts, or  
12 electronic equivalents, to one or more Defendant banks, or their  
13 co-conspirators, for deposit in their commercial demand deposit  
14 bank accounts.

15 6. Plaintiff JAMES MASER and MAIZ HOLDING COMPANY, a  
16 California Corporation, dba PICANTE COCINA RESTAURANT  
17 (collectively referred to as "PICANTE") are residents of Alameda  
18 County and are licensed to do business and are doing business as  
19 a restaurant in Alameda County. PICANTE presently has VISA and  
20 MASTERCARD contracts with one or more Defendant banks, or their  
21 co-conspirators, and has "sold" (deposited) VISA and MASTERCARD  
22 credit and debit receipts, or electronic equivalents, to one or  
23 more Defendant banks, or their co-conspirators, for deposit in  
24 their commercial demand deposit bank accounts.

25 7. VISA and MASTERCARD (referred to as "Consortiums", *U.S.*  
26 *v. Visa U.S.A. Inc.*, 344 F. 3d 229, 242 (2<sup>nd</sup> Cir. 2003)) are bank  
27  
28

1 card associations whose proprietary members include Defendant  
2 banks, other bank members, regional banking associations, and  
3 other financial institutions. The Consortiums' actions of which  
4 complaint is herein made were carried on for the economic  
5 advantage of their members and with their knowledge and consent.  
6

7 8. Defendant WELLS FARGO BANK N.A., a subsidiary of WELLS  
8 FARGO & COMPANY ("WELLS FARGO") is a nationally chartered bank  
9 with offices in the Northern District of California. It engages  
10 in interstate commerce. It participates in the management of  
11 and has a proprietary interest in VISA and MASTERCARD. It is an  
12 "acquiring bank" in that throughout California, and most other  
13 states, it acquires from Plaintiffs or other retailers and class  
14 members ("Merchants") VISA and MASTERCARD credit and debit  
15 receipts, or electronic equivalents, for deposit in their  
16 commercial demand deposit bank account at the face amount less a  
17 minimum merchant discount fee which is established, both  
18 directly and indirectly, by the Consortiums. *U.S. v. Visa U.S.A.*  
19 *Inc.*, 163 F. Supp. 2d 322, 338 (S.D.N.Y. 2001). WELLS FARGO,  
20 along with all other acquiring Consortium members, Defendant  
21 banks and co-conspirators, charges to Plaintiffs or other  
22 Merchants the amount of the interchange rate fixed by the  
23 Consortiums as the minimum merchant discount fee. The  
24 interchange rate is most of the merchant discount fee. WELLS  
25 FARGO knowingly, intentionally and actively participated in an  
26 individual capacity with the Consortiums in charging the fixed  
27  
28

1 minimum merchant discount fees. Normally WELLS FARGO and other  
2 member banks of VISA and MASTERCARD do not charge a fee, or  
3 charge a much lower fee, when they buy (accept) checks from their  
4 retail customers for deposit in the bank customer's commercial  
5 account.

6  
7 9. Defendant BANK OF AMERICA, N.A., a subsidiary of BANK  
8 OF AMERICA CORPORATION ("BANK OF AMERICA") is a nationally  
9 chartered bank with offices in the Northern District of  
10 California. It engages in interstate commerce. It participates  
11 in the management of and has a proprietary interest in VISA and  
12 MASTERCARD. It is an "acquiring bank" in that throughout  
13 California, and most other states, it acquires from Plaintiffs  
14 or other retailers and class members ("Merchants") VISA and  
15 MASTERCARD credit and debit receipts, or electronic equivalents,  
16 for deposit in their commercial demand deposit bank account at  
17 the face amount less a minimum merchant discount fee which is  
18 established, both directly and indirectly, by the Consortiums.  
19 *U.S. v. Visa U.S.A. Inc.*, 163 F. Supp. 2d 322, 338 (S.D.N.Y.  
20 2001). BANK OF AMERICA, along with all other acquiring  
21 Consortium members, Defendant banks and co-conspirators, charges  
22 to Plaintiffs or other Merchants the amount of the interchange  
23 rate fixed by the Consortiums as the minimum merchant discount  
24 fee. The interchange rate is most of the merchant discount  
25 fee. BANK OF AMERICA knowingly, intentionally and actively  
26 participated in an individual capacity with the Consortiums in  
27  
28

1 charging the fixed minimum merchant discount fees. Normally  
2 BANK OF AMERICA and other member banks of VISA and MASTERCARD do  
3 not charge a fee, or charge a much lower fee, when they buy  
4 (accept) checks from their retail customers for deposit in the  
5 bank customer's commercial account.  
6

7 10. Defendant U.S. BANK, N.A, a subsidiary of U.S. BANCORP  
8 ("US BANK") is a nationally chartered bank doing business in the  
9 Northern District of California. It engages in interstate  
10 commerce. It participates in the management of and has a  
11 proprietary interest in VISA and MASTERCARD. It is an  
12 "acquiring bank" in that throughout California, and most other  
13 states, it acquires from Plaintiffs or other retailers and class  
14 members ("Merchants") VISA and MASTERCARD credit and debit  
15 receipts, or electronic equivalents, for deposit in their  
16 commercial demand deposit bank account at the face amount less a  
17 a minimum merchant discount fee which is established, both  
18 directly and indirectly, by the Consortiums. *U.S. v. Visa U.S.A.*  
19 *Inc.*, 163 F. Supp. 2d 322, 338 (S.D.N.Y. 2001). US BANK, along  
20 with all other acquiring Consortium members, Defendant banks and  
21 co-conspirators, charges to Plaintiffs or other Merchants the  
22 amount of the interchange rate fixed by the Consortiums as the  
23 minimum merchant discount fee. The interchange rate is most of  
24 the merchant discount fee. US BANK knowingly, intentionally and  
25 actively participated in an individual capacity with the  
26 Consortiums in charging the fixed minimum merchant discount  
27  
28

1 fees. Normally US BANK and other member banks of VISA and  
2 MASTERCARD do not charge a fee, or charge a much lower fee, when  
3 they buy (accept) checks from their retail customers for deposit  
4 in the bank customer's commercial account.

5  
6 CO-CONSPIRATORS

7 11. Defendants' co-conspirators include at least all banks  
8 and other financial institutions doing business in the United  
9 States, engage in interstate commerce, and have a management and  
10 proprietary interest in VISA and/or MASTERCARD, have knowledge  
11 of and consent to the acts of the Consortiums of which complaint  
12 is made herein. Each is an "acquiring bank" in that it acquires  
13 from Plaintiffs or other merchants and class members VISA and/or  
14 MASTERCARD credit and debit receipts, or electronic equivalents,  
15 for deposit in their commercial demand deposit bank account at  
16 the face amount less a merchant discount fee which is  
17 established, both directly and indirectly, by the Consortiums.  
18 *U.S. v. Visa U.S.A. Inc.*, 163 F. Supp. 2d 322, 338 (S.D.N.Y.  
19 2001). Most of the merchant discount fee is the interchange  
20 rate which is established by the Consortiums. The acquiring  
21 banks knowingly, intentionally and actively participated in an  
22 individual capacity with the Consortiums in following these fees  
23 charged to Plaintiffs or other Merchants. The co-conspirators  
24 also include Third Party Processors ("TPPs") who process for  
25 merchants VISA and/or MASTERCARD credit and debit receipts, or  
26 electronic equivalents, for deposit in the merchants' demand  
27 deposit accounts in banks at the face amount less a fee the  
28 minimum amount of which they know is established both directly

1 and indirectly by the Consortiums. Normally each co-conspirator  
2 and other *members* of VISA and/or MASTERCARD do not charge a fee,  
3 or charge a much lower fee, when they buy (accept) checks from  
4 their retail customers for deposit in the bank customer's  
5 commercial account.

6 12. The final judgment or decree rendered in *United States*  
7 *v. Visa U.S.A., Inc.* 163 F. Supp. 2d 322 (S.D.N.Y. 2001),  
8 affirmed 344 F. 3d 229 (2<sup>nd</sup> Cir. 2003), cert. den. \_\_\_ U.  
9 S.\_\_\_(2004), is prima facie evidence against the Consortiums as  
10 to all matters respecting which said judgment would be an  
11 estoppel between the parties thereto. 16 U.S.C.A. sec. 16(a).  
12

13 13. The "fixed" interchange fee which the Consortiums  
14 claim to have been held legal in *Nat'l Bankcard Corp. v. Visa*  
15 *U.S.A., Inc.* 779 F. 2d 592 (11<sup>th</sup> Cir. 1986)(*NaBanco*), has not  
16 been applicable to the activities of the Consortiums since long  
17 before January 1, 2004 because:

18 a. The *NaBanco* fee was based on a cost  
19 reimbursement methodology to reimburse the card  
20 issuing bank for costs, including the cost of bearing  
21 the risk of loss, which methodology the Consortiums no  
22 longer use. Now the Consortiums primarily consider  
23 each others rates and secondarily the rates of  
24 competitors. *U.S. v. Visa U.S.A. Inc.*, 163 F. Supp. 2d  
25 322, 337 (S.D.N.Y. 2001). The Consortiums charge  
26 differing interchange rates to different classes of  
27 merchants based, in part, on the degree to which a  
28



1 given merchant category needs to accept general  
2 purpose cards. *U.S. v. Visa U.S.A. Inc.*, 163 F. Supp.  
3 2d 322, 340 (S.D.N.Y. 2001). This latest methodology  
4 requires that each merchant acquirer charge for its  
5 merchant discount at least the appropriate  
6 Consortium's interchange rate; otherwise there could  
7 be no differentiation among merchants. For the period  
8 for which there are available data, the average VISA  
9 merchant discount rate always exceeded the VISA  
10 interchange rate. Evans and Schmalensee, *Paying with*  
11 *Plastic* (MIT Press 2001, p. 130. There is thus in  
12 effect among all financial institutions and TPP's an  
13 agreement to charge a minimum merchant discount set by  
14 the Consortiums.  
15

16  
17 b. Both Consortiums have market power in the  
18 general purpose card market. *U.S. v. Visa U.S.A. Inc.*,  
19 163 F. Supp. 2d 322, 340-41 (S.D.N.Y. 2001). At  
20 present volumes of transactions, the Consortiums  
21 would survive with a zero interchange fee. Evans and  
22 Schmalensee, *Paying with Plastic* (MIT Press 2001, p.  
23 280.  
24

25 c. Commencing in 1991 the Consortiums created  
26 special lower interchange fees for super markets as an  
27 incentive for acquirers to sign up more of such  
28 merchants for market reasons benefiting their members  
which had nothing to do with card issuer's costs or

1 risk of loss. Evans and Schmalensee, *Paying with*  
2 *Plastic* (MIT Press 2001, p. 132-33.

3 d. Commencing prior to January 1, 2004, many  
4 merchant applications for acceptance of Consortiums'  
5 transactions for deposit showed minimum VISA and  
6 MASTERCARD discount pricing exactly at the interchange  
7 rates established by the Consortiums. Some contracts  
8 between merchants and their acquirers provide for  
9 direct pass through of interchange rates.  
10

11 e. Both MASTERCARD and VISA negotiated  
12 individual incentive compensation packages with select  
13 members involving millions of dollars to compete for  
14 their business. *U.S. v. Visa U.S.A. Inc.*, 163 F. Supp.  
15 2d 322, 382, 403-4 (S.D.N.Y. 2001).

16 14. Long prior to January 1, 2004, the Defendant Banks and  
17 the co-conspirators herein either expressly, by acquiescence,  
18 understanding or practice adopted the interchange fees set by  
19 each of the Consortiums for the various categories of merchants  
20 as the minimum merchant discounts for each class of merchants  
21 and such was known to each of the Defendant Banks and co-  
22 conspirators.  
23

24 15. John Reed the CEO of CitiGroup, the parent of  
25 CitiBank, one of the largest issuers of payment cards, in 1997  
26 proposed to the management of VISA including the CEO of BANK OF  
27 AMERICA and others that the clearing and settlement of payment  
28 cards be merged with the clearing and settlement of checks so as

1 to give an individual issuer of cards control of its own brand  
2 and merchant relationships with the result that there would be  
3 more competition among banks. This proposal was rejected, and  
4 thereafter CitiBank made an agreement with MASTERCARD for card  
5 issuance which expressly prohibited CitiBank from interfering  
6 with the cash flow of other members of MASTERCARD.  
7

8 CLASS

9 16. Plaintiffs represent the class of all persons and  
10 business entities in the United States who are retailers,  
11 businesses, professions and merchants, including those "on-  
12 line", and presently have VISA and/or MASTERCARD merchant  
13 contracts with one or more member banks of Defendants VISA  
14 and/or MASTERCARD and/or a TPP pursuant to which they have  
15 "sold" (deposited) VISA and MASTERCARD credit or debit receipts,  
16 or electronic equivalents, to one or more member banks for  
17 deposit in their commercial demand deposit bank account and have  
18 thereby incurred VISA and/or MASTERCARD merchant discount fees  
19 which are established, both directly and indirectly, by the  
20 Consortiums. The class does not include the named Defendants,  
21 their co-conspirators, their directors, officers, or members of  
22 their families, or those merchants who negotiate merchant  
23 discounts directly with VISA and/or MASTERCARD or receive  
24 payments directly from them.  
25  
26

27 17. The minimum merchant discount fees established by the  
28 Consortiums have harmed and continue to harm the interests of

1 retailers, businesses, professions and merchants, including  
2 those "on-line", throughout the United States. The members of  
3 the class are so numerous that joinder of all members is  
4 impracticable.

5 18. Defendants' relationships with the class members and  
6 Defendants' practice of assessing VISA and/or MASTERCARD  
7 merchant discount or interchange fees with respect to class  
8 members have been substantially uniform. Questions of law and  
9 fact will predominately be common to the class.  
10

11 19. The named Plaintiffs have no conflict of interest with  
12 class members and have retained counsel competent and  
13 experienced in federal and state antitrust litigation. The  
14 named Plaintiffs and their counsel will fairly and adequately  
15 represent the interests of the class.  
16

17 20. Defendants have acted, continue to act, refused to act  
18 and continue to refuse to act on grounds generally applicable to  
19 the class, thereby making appropriate damages and injunctive  
20 relief with respect to the class as a whole.

21 21. This action is superior to any other method for the  
22 fair and efficient adjudication of this legal dispute, as  
23 joinder of all members is not only impracticable, but  
24 impossible. The damages suffered by certain members of the  
25 class are small in relation to the expense and burden of  
26 individual litigation and therefore it is highly impractical for  
27 such class members, individually, to attempt redress of the  
28

1 defendants' merchant discount and interchange fees and to enjoin  
2 price fixing. There will be no extraordinary difficulty in the  
3 management of this class action. Common questions of law and  
4 fact exist with respect to all class members and predominate  
5 over any questions solely affecting individual members. Among  
6 the questions of law and fact common to the class, many of which  
7 cannot be seriously disputed, are the following:  
8

9 (a) Whether the Defendant banks, co-conspirators and the  
10 Consortiums have violated the Sherman Act by fixing the minimum  
11 merchant discount for credit cards. ("Credit cards" as used  
12 throughout includes general purpose bank credit and charge  
13 cards.)  
14

15 (b) Whether the Defendant banks, co-conspirators and the  
16 Consortiums have violated the Sherman Act by fixing the minimum  
17 merchant discount for debit cards.

18 (c) Whether Defendant Consortiums market on behalf of their  
19 members by establishing lower interchange fees for both debit  
20 and credit transactions for large volume merchants.  
21

#### 22 RELEVANT MARKET

23 22. The relevant product market is acquisition of receipts  
24 from general purpose credit, charge and debit cards, or  
25 electronic equivalents, for deposit in commercial bank accounts.  
26

27 23. The relevant geographic market is the United States.  
28

**FIRST CLAIM FOR RELIEF (Credit Cards)**  
**DAMAGES FOR VIOLATIONS OF SECTION ONE**  
**OF THE SHERMAN ACT AGAINST**  
**VISA, MASTERCARD, BANK OF AMERICA, WELLS FARGO, US BANK**

24. Plaintiffs BALA and PICANTE reaver each and every averment in paragraphs 1 through 23 as if fully set forth herein.

25. VISA and MASTERCARD each is a combination of banks which are in competition with each other, directly or indirectly, which as such combination sets an "interchange fee" which is in effect a minimum merchant discount fee to be paid by merchants to an acquiring financial institution directly or through a third party processor on deposits of proceeds of merchant sales paid for by one of the Consortiums' credit cards. ("Credit cards" as used throughout includes general purpose bank credit and charge cards.) The separate decisions of VISA and MASTERCARD as to the interchange fees or minimum merchant discounts are horizontal restraints on competition, and are not established by free competition, nor would they be absorbed by merchants and Plaintiffs BALA and PICANTE in a competitive system, e.g. checks.

26. Plaintiffs BALA and PICANTE, and all others similarly situated, must pay a merchant discount fee upon the deposit of VISA and MASTERCARD credits, whereas the deposit of checks, which entails more processing, is usually without such fee to the depositor. Increases by VISA and MASTERCARD of the

1 interchange fees have resulted in increases in merchant discount  
2 fees.

3 27. Plaintiffs BALA and PICANTE, and all others similarly  
4 situated, have a dilemma where each merchant must individually  
5 choose to accept VISA and MASTERCARD in order to meet the  
6 competition; however all are worse off as a result due to the  
7 expense of the merchant discount fee.  
8

9 28. VISA and MASTERCARD and Defendant banks and all other  
10 co-conspirators obtain supracompetitive profits by the  
11 assessment of merchant discount fees on the deposits of  
12 Plaintiffs BALA and PICANTE, and all others similarly situated.  
13

14 29. The reality is that VISA and MASTERCARD are able to  
15 charge substantially different prices to various categories of  
16 hundreds of thousands of merchants who must take credit and  
17 debit cards at any price because their customers insist on using  
18 those cards.

19 30. Plaintiffs BALA and PICANTE and all others similarly  
20 situated have been damaged by the payment of merchant discounts,  
21 in as yet an undetermined total amount, which total amount  
22 should be trebled.  
23

24 **SECOND CLAIM FOR RELIEF (Debit Cards)**  
25 **DAMAGES FOR VIOLATIONS OF SECTION ONE**

26 **OF THE SHERMAN ACT AGAINST**  
**VISA, MASTERCARD, BANK OF AMERICA, WELLS FARGO, US BANK**

27 31. Plaintiffs BALA and PICANTE reaver each and every  
28 averment in paragraphs 1 through 23, 25 through 30 except that

1 in this claim for relief they limit their claims to deposits of  
2 VISA and MASTERCARD debit card receipts.

3 32. The holding in *NaBanco* did not refer to deposits made  
4 from proceeds of purchases made with VISA debit cards, and its  
5 reasoning would not apply to debit purchases because the risk of  
6 loss to debit card issuers is minimal and usually borne by the  
7 merchant. *U.S. v. Visa U.S.A. Inc.*, 163 F. Supp. 2d 322, 331  
8 (S.D.N.Y. 2001).

9 **THIRD CLAIM FOR RELIEF (Consortium Marketing)**  
10 **DAMAGES FOR VIOLATION OF SECTION ONE OF THE SHERMAN ACT**  
11 **AGAINST ALL DEFENDANTS**

12 33. Plaintiffs BALA and PICANTE reaver each and every  
13 averment in paragraphs 1 through 23 as if fully set forth  
14 herein.

15 34. Prior to January 1, 2004, but after the decision then  
16 on appeal in *U.S. v Visa U.S.A.*, both Consortiums commenced to  
17 market on behalf of their members by lowering interchange fees  
18 for both debit and credit transactions with large volume  
19 merchants in some cases by negotiating directly with such  
20 merchants for the purpose of increasing use of members' cards  
21 with such merchants as well as increasing the acquisition of  
22 deposits of proceeds of card transactions by Consortium members  
23 or co-conspirators. The lowering of interchange fees as  
24 described herein would not operate to increase use of cards and  
25 to act as incentive for acquirers to sign up merchants to use  
26 each Consortium's cards if it were not understood that acquirers  
27 would lower merchant discounts to correspond with the reduction  
28 in interchange fees. If members of the consortiums and the co-



1 conspirators had not knowingly, intentionally and consciously  
2 followed the merchant discounts set by the Consortiums but  
3 instead had competed among themselves for merchant deposits by  
4 lowering merchant discounts, the merchant discounts for all  
5 merchants would have been at least as low as those set for large  
6 volume merchants.

7 35. VISA has made payments directly to merchants to induce  
8 increased VISA credit and debit card sales which necessarily  
9 results in a net lowering of costs to those merchants.

10 36. The activities of each Consortium described in  
11 paragraphs 34 and 35 have occurred and do occur with the  
12 knowledge and consent of the members of each Consortium, and  
13 they continue to occur up to the present. Such activities are  
14 authorized only by the Capper-Volstead Act, 7 U.S.C. sec. 291;  
15 perhaps 15 U.S.C. sec. 17, and the Webb-Pomerane Act, 15 U.S.C.  
16 secs. 61-65. Defendant Consortiums do not meet the requirements  
17 of those acts.

18  
19 **FOURTH CLAIM FOR RELIEF**  
20 **15 U.S.C. Sec. 26, SECTION 16 OF THE CLAYTON ACT**  
21 **AGAINST ALL DEFENDANTS**

22 37. Plaintiffs BALA and PICANTE reaver all the preceding  
23 paragraphs as if set forth in this claim.

24 38. This claim is brought under Section 16 of the Clayton  
25 Act, 15 U.S.C. § 26.

26 39. Plaintiffs BALA and PICANTE and all those similarly  
27 situated seek against VISA, MASTERCARD, Defendant banks, member  
28 banks, and their co-conspirators that this Court order

1 Defendants to cease and desist from violations of the Sherman  
2 Act described in the preceding claims for relief.

3  
4 WHEREFORE, Plaintiffs BALA and PICANTE respectfully demand:

- 5 1. That the Court declare, adjudge and decree that  
6 Defendants have committed the violations of federal  
7 law alleged herein.  
8  
9 2. That the Court enter an order pursuant to Rule 23 of  
10 the Federal Rules of Civil Procedure permitting this  
11 action to be maintained as a class action on behalf of  
12 the class specified herein.  
13  
14 3. That the court award damages sustained by the  
15 Plaintiffs BALA and PICANTE, and members of the class,  
16 in an amount to be proved at trial, to be trebled  
17 according to law, plus interest, including prejudgment  
18 interest, reasonable attorney's fees and costs of  
19 suit, and such other and further relief as this Court  
20 may deem just and proper.  
21  
22 4. That the Court order:  
23 (a) That Defendants cease and desist from setting the  
24 interchange fee and minimum the merchant discount fee.  
25 (b) The elimination from VISA and MASTERCARD of all joint  
26 marketing activities.  
27  
28 5. That Plaintiffs BALA and PICANTE be awarded their costs  
of suit including reasonable attorney's fees.

1           Plaintiffs BALA and PICANTE hereby demand trial by jury of  
2 all issues properly triable thereby.

3           Dated:   April 25, 2005

4                               Attorneys of record for  
5                               Plaintiffs SHERI L. KENDALL,  
6                               dba BALA HAIR SALON, JAMES  
7                               MASER, MAIZ HOLDING COMPANY,  
8                               dba PICANTE COCINA RESTAURANT,  
                             on Behalf of Themselves and All  
                             Others Similarly Situated

9  
10                              By: \_\_\_\_\_  
11                                       RICHARD J. ARCHER, ESQ.  
12                                       ARCHER & HANSON

13  
14                              By: \_\_\_\_\_  
15                                       JAMES A. KOPCKE  
16                                       GOLDEN • KOPCKE, LLP